(10/2/06)

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by Shri Saxena Adv. Advocate

R. to D.R. (J) 3/3/06

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(04)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

CRIMINAL APPEAL 164/2006

APPELLANT (IN JAIL)	:	Rajkumar S/O Harakh Ram . aged about 25 years, - R/o Village- Marka Tola , Police Station Korer Dist. North Bastar Kanker (C.G.)
		Versus
RESPONDENT	:	State of Chhattisgarh Through P.S. Korer Dist. North Bastar . Kanker (C.G.)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE CRIMINAL PROCEDURE, 1973.

(26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.164/2006

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Rajkumar

Versus

State of Chhattisgarh)

Shri Arun Kocher, Counsel for the appellant.

Shri Ashish Shukla, Government Advocate for the State.

JUDGMENT

(Delivered on this 23rd day of June 2006)

This appeal is directed against the judgment dated 25.2.2006 delivered by Shri S.K.Singh, 1st Additional Sessions Judge, Kanker in Sessions Case No. 408/2005 whereby the appellant was convicted under Section 376(1) I.P.C. and sentenced to undergo R.I. for seven years and a fine of Rs.500/- and in default to undergo additional rigorous imprisonment for one month.

2. Briefly stated the prosecution story is that on 11.8.2005 at about 2.00 at Markatola the prosecutrix, aged about 45 years, was alone in the house. Her husband Keshavram @ Keshariya P.W.4 had gone for begging. The appellant came to the house of the prosecutrix and forcibly committed rape on her. While the appellant was committing rape on the prosecutrix, Keshavram P.W.4 arrived. There was a quarrel between Keshavram, appellant and the prosecutrix. The prosecutrix informed about the occurrence to Jayantri Bai P.W.1 and Leela Bai P.W.2. F.I.R. was lodged at 5.30 P.M. on the same day vide

Ex.P.4 by the prosecutrix in Police Station Korar, Dist. Kanker. The prosecutrix was sent for medical examination. Dr. (Smt.) Hemlata Sahu P.W.6 found no marks of injury on her private parts. She found a small fresh scratch mark on the back of the prosecutrix. It was opined that the prosecutrix was habituated of coitus and no definite opinion could be given about fresh coitus. Vaginal slides were prepared, sealed and handed over to the Constable. One red coloured *saya* worn by the prosecutrix, at the time of occurrence, having semen like stains at many places was seized vide Ex.P.10 on the same day. Two vaginal slides in a sealed condition prepared by Dr.(Smt.) Hemlata Sahu P.W.6 were also seized on 12.8.2005. The appellant was also sent for medical examination on 12.8.2005 which revealed that he was capable of performing sexual intercourse. After completion of investigation, the appellant was prosecuted under Section 376 (1) I.P.C.

3. The appellant abjured the guilt, pleaded innocence and false implication and led evidence of Sube Singh D.W.1 and Dorulal D.W.2 in defence. The prosecution examined as many as 9 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid in paragraph-1.

4. Shri Arun Kochar, learned counsel for the appellant has assailed the conviction of the appellant on the ground that the evidence led by the prosecution does not establish the guilt of the appellant for the offence under Section 376(1) I.P.C. since the testimony of the prosecutrix is unreliable and not worthy of credence. It was further argued that the prosecution has failed to produce the report of F.S.L. to establish the presence of semen and human spermatozoa on the vaginal slides as also the underwear of the appellant. It was also contended that Jayantri Bai P.W.1 and Leela Bai P.W.2 to whom the prosecutrix was alleged to have immediately narrated the incident did

not support the prosecution story. Lastly, it was contended that the medical evidence of Dr. (Smt.) Hemlata Sahu did not corroborate the testimony of the prosecutrix and in view of the evidence of Keshavram P.W.4, it could not be ruled out that the fresh scratch mark on the back of the prosecutrix was due to the scuffle with the accused. On these grounds it was argued that the conviction and sentence awarded by the learned trial Judge is liable to be set aside.

5. Shri Ashish Shukla, learned Government Advocate, on the other hand, argued in support of the impugned judgment and contended that the medical evidence of Dr. (Smt.) Hemlata Sahu P.W.6 corroborated the testimony of the prosecutrix since fresh scratch marks were found on her back. It was also contended that the absence of internal injury on her private parts was insignificant since she was a married woman. It was also submitted that the testimony of the prosecutrix was corroborated by the evidence of her husband Keshavram P.W.4, as a result thereof, conviction of the appellant on the testimony of the prosecutrix was liable to be sustained since the testimony of the prosecutrix was reliable and worthy of credence.

6. Having heard the rival submissions, I have perused the record of Sessions case No.408/2005. It is settled law that in a sexual offence, the testimony of the prosecutrix is not to be treated at par with that of an accomplice and the appellant can be convicted on the basis of the sole testimony of the prosecutrix where it appears that the testimony of the prosecutrix is natural, inspires confidence and worthy of credence. It is also well settled now that where the testimony of the prosecutrix, a married woman, is natural and reliable, the Court may look for corroboration from medical evidence only to satisfy its judicial conscience but not otherwise.

7. Bearing the above touch-stone in mind, I have scanned the testimony of the prosecutrix. In the F.I.R. Ex.P.4, the prosecutrix

had stated that the offence was committed in the afternoon at 2.00 P.M. However, in her testimony, she has clearly denied this while stating that the offence was committed at 11.00 A.M. The prosecutrix P.W.5 stated that while her husband had gone for begging, the appellant entered the house and mounting on her after removing her clothes, committed rape on her. She further stated that while the appellant indulged in the sexual act, her husband arrived and objected to the appellant. However, this testimony is rendered unworthy of credit by the statement made by the prosecutrix in paragraph 3 wherein she clearly stated that while the appellant was near the road, her husband had returned home after begging alms and a quarrel had then ensued between her husband and the appellant. She has reiterated the same statement after a few lines while stating that when her husband returned, he had met the appellant outside the house and after a quarrel ensued between them she had entered the house. This renders the testimony of the prosecutrix doubtful.

8. Although the prosecution has alleged that the prosecutrix had narrated the incident immediately to Jayantri Bai P.W.1 and Leela Bai P.W.2, but the prosecutrix in paragraph 4 of her testimony clearly denied this and stated that she did not narrate the incident to Jayantri Bai P.W.1 and Leela Bai P.W.2. Jayantri Bai P.W.1 and Leela Bai P.W.2 have also denied that the prosecutrix had informed them about the commission of rape on her by the appellant. Both these witnesses were declared hostile by the prosecution.

9. Dr. (Smt.) Hemlata Sahu P.W.6 who had examined the prosecutrix on 11.8.2005 had clearly stated that on internal examination she did not find any injury on the private parts of the prosecutrix and opined that she was habituated to sexual intercourse. It is true that Dr.(Smt.) Hemlata Sahu P.W.6 had found some fresh

scratch marks on the back of the prosecutrix but they are well explained by the testimony of Keshavram P.W.4, husband of the prosecutrix who deposed that when he returned after begging alms to his house, he found that a quarrel had ensued between the appellant and his wife in which the clothes of the appellant were torn. Therefore, the possibility that the prosecutrix had sustained these scratch marks in the scuffle with the appellant could also not be ruled out.

10. K.R.Khande, S.H.O. Korar P.W.9 has proved that the vaginal slides as also underwear of the appellant were seized and were sent to F.S.L. for chemical analysis. However, the prosecution did not produce the report of the F.S.L. to establish presence of semen and human spermatozoa on the vaginal slides of the prosecutrix as also the underwear of the appellant.

11. The testimony of Keshavram P.W.4 and the prosecutrix P.W.5 clearly reveals that the house of the prosecutrix is situated at a place where public thoroughfare is going on. Keshavram P.W.4 has also admitted that there is a hotel situated near his house. The prosecutrix has also admitted in paragraph 3 that her house is situated in a very busy locality and on the date of occurrence there was crowd near her house. In the F.I.R., the prosecutrix had stated that she had attempted to raise an alarm at the time of occurrence but the appellant had gagged her mouth. However, in her testimony she did not say so but stated that she had shouted, but no one from the neighbouring crowd came to her rescue. This testimony does not inspire confidence.

12. The prosecutrix stated that her husband arrived when the appellant was committing rape on her. However, Keshavram stated that at the time when he arrived a quarrel had ensued between the appellant and the prosecutrix. According to Keshavram, the time then

was 2.00 or 3.00 P.M. whereas, according to the prosecutrix, the incident occurred at 11.00 or 12.00 A.M. and not in the afternoon.

13. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the testimony of the prosecutrix is unworthy of credit and it would be highly unsafe to rest the conviction of the appellant on such testimony especially when it is neither corroborated by medical evidence, nor by independent witnesses namely Jayantri Bai P.W.1 and Leela Bai P.W.2. In the facts and circumstances mentioned above, it would not to be prudent to sustain the conviction since a serious doubt is created in the prosecution story. The appellant is thus entitled to benefit of doubt.

14. In the result, the appeal is allowed. Conviction of the appellant under Section 376 (1) I.P.C. and the sentence awarded thereunder are set aside. The appellant is acquitted after giving him the benefit of doubt. The appellant shall be set at liberty, if not required in any other case. Fine, if paid, shall be refunded to him.

Sd-/
Dilip Raosaheb Deshmukh
Judge